

their trademarks. Mr. Speaker, we must do everything we can to encourage small business to grow in this New Economy.

I urge my colleagues to support the legislation.

Mr. CONYERS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and pass the bill, H.R. 741.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

# MULTIDISTRICT, MULTIPARTY, MULTIFORUM TRIAL JURISDICTION ACT OF 2001

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 860) to amend title 28, United States Code, to allow a judge to whom a case is transferred to retain jurisdiction over certain multidistrict litigation cases for trial, and to provide for Federal jurisdiction of certain multiparty, multiforum civil actions, as amended.

The Clerk read as follows:

H.R. 860

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

## SECTION 1. SHORT TITLE.

This Act may be cited as the "Multidistrict, Multiparty, Multiforum Trial Jurisdiction Act of 2001".

## SEC. 2. MULTIDISTRICT LITIGATION.

Section 1407 of title 28, United States Code, is amended—

(1) in the third sentence of subsection (a), by inserting "or ordered transferred to the transferee or other district under subsection (i)" after "terminated"; and

(2) by adding at the end the following new subsection:

"(i)(1) Subject to paragraph (2) and except as provided in subsection (j), any action transferred under this section by the panel may be transferred for trial purposes, by the judge or judges of the transferee district to whom the action was assigned, to the transferee or other district in the interest of justice and for the convenience of the parties and witnesses.

"(2) Any action transferred for trial purposes under paragraph (1) shall be remanded by the panel for the determination of compensatory damages to the district court from which it was transferred, unless the court to which the action has been transferred for trial purposes also finds, for the convenience of the parties and witnesses and in the interests of justice, that the action should be retained for the determination of compensatory damages."

## SEC. 3. MULTIPARTY, MULTIFORUM JURISDICTION OF DISTRICT COURTS.

(a) BASIS OF JURISDICTION.—

(1) IN GENERAL.—Chapter 85 of title 28, United States Code, is amended by adding at the end the following new section:

### "§ 1369. Multiparty, multiforum jurisdiction

"(a) IN GENERAL.—The district courts shall have original jurisdiction of any civil action

involving minimal diversity between adverse parties that arises from a single accident, where at least 25 natural persons have either died or incurred injury in the accident at a discrete location and, in the case of injury, the injury has resulted in damages which exceed \$150,000 per person, exclusive of interest and costs, if—

"(1) a defendant resides in a State and a substantial part of the accident took place in another State or other location, regardless of whether that defendant is also a resident of the State where a substantial part of the accident took place;

"(2) any two defendants reside in different States, regardless of whether such defendants are also residents of the same State or States; or

"(3) substantial parts of the accident took place in different States.

"(b) LIMITATION OF JURISDICTION OF DISTRICT COURTS.—The district court shall abstain from hearing any civil action described in subsection (a) in which—

"(1) the substantial majority of all plaintiffs are citizens of a single State of which the primary defendants are also citizens; and

"(2) the claims asserted will be governed primarily by the laws of that State.

"(c) SPECIAL RULES AND DEFINITIONS.—For purposes of this section—

"(1) minimal diversity exists between adverse parties if any party is a citizen of a State and any adverse party is a citizen of another State, a citizen or subject of a foreign state, or a foreign state as defined in section 1603(a) of this title;

"(2) a corporation is deemed to be a citizen of any State, and a citizen or subject of any foreign state, in which it is incorporated or has its principal place of business, and is deemed to be a resident of any State in which it is incorporated or licensed to do business or is doing business;

"(3) the term 'injury' means—

"(A) physical harm to a natural person; and

"(B) physical damage to or destruction of tangible property, but only if physical harm described in subparagraph (A) exists;

"(4) the term 'accident' means a sudden accident, or a natural event culminating in an accident, that results in death or injury incurred at a discrete location by at least 25 natural persons; and

"(5) the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

"(d) INTERVENING PARTIES.—In any action in a district court which is or could have been brought, in whole or in part, under this section, any person with a claim arising from the accident described in subsection (a) shall be permitted to intervene as a party plaintiff in the action, even if that person could not have brought an action in a district court as an original matter.

"(e) NOTIFICATION OF JUDICIAL PANEL ON MULTIDISTRICT LITIGATION.—A district court in which an action under this section is pending shall promptly notify the judicial panel on multidistrict litigation of the pendency of the action."

(2) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 85 of title 28, United States Code, is amended by adding at the end the following new item:

"1369. Multiparty, multiforum jurisdiction."

(b) VENUE.—Section 1391 of title 28, United States Code, is amended by adding at the end the following:

"(g) A civil action in which jurisdiction of the district court is based upon section 1369 of this title may be brought in any district in which any defendant resides or in which a substantial part of the accident giving rise to the action took place."

(c) MULTIDISTRICT LITIGATION.—Section 1407 of title 28, United States Code, as amended by section 2 of this Act, is further amended by adding at the end the following:

"(j)(1) In actions transferred under this section when jurisdiction is or could have been based, in whole or in part, on section 1369 of this title, the transferee district court may, notwithstanding any other provision of this section, retain actions so transferred for the determination of liability and punitive damages. An action retained for the determination of liability shall be remanded to the district court from which the action was transferred, or to the State court from which the action was removed, for the determination of damages, other than punitive damages, unless the court finds, for the convenience of parties and witnesses and in the interest of justice, that the action should be retained for the determination of damages.

"(2) Any remand under paragraph (1) shall not be effective until 60 days after the transferee court has issued an order determining liability and has certified its intention to remand some or all of the transferred actions for the determination of damages. An appeal with respect to the liability determination of the transferee court may be taken during that 60-day period to the court of appeals with appellate jurisdiction over the transferee court. In the event a party files such an appeal, the remand shall not be effective until the appeal has been finally disposed of. Once the remand has become effective, the liability determination shall not be subject to further review by appeal or otherwise.

"(3) An appeal with respect to determination of punitive damages by the transferee court may be taken, during the 60-day period beginning on the date the order making the determination is issued, to the court of appeals with jurisdiction over the transferee court.

"(4) Any decision under this subsection concerning remand for the determination of damages shall not be reviewable by appeal or otherwise.

"(5) Nothing in this subsection shall restrict the authority of the transferee court to transfer or dismiss an action on the ground of inconvenient forum."

(d) REMOVAL OF ACTIONS.—Section 1441 of title 28, United States Code, is amended—

(1) in subsection (e) by striking "(e) The court to which such civil action is removed" and inserting "(f) The court to which a civil action is removed under this section"; and

(2) by inserting after subsection (d) the following new subsection:

"(e)(1) Notwithstanding the provisions of subsection (b) of this section, a defendant in a civil action in a State court may remove the action to the district court of the United States for the district and division embracing the place where the action is pending if—

"(A) the action could have been brought in a United States district court under section 1369 of this title; or

"(B) the defendant is a party to an action which is or could have been brought, in whole or in part, under section 1369 in a United States district court and arises from the same accident as the action in State court, even if the action to be removed could not have been brought in a district court as an original matter.

The removal of an action under this subsection shall be made in accordance with section 1446 of this title, except that a notice of removal may also be filed before trial of the action in State court within 30 days after the date on which the defendant first becomes a party to an action under section 1369 in a United States district court that arises from the same accident as the action in State court, or at a later time with leave of the district court.

“(2) Whenever an action is removed under this subsection and the district court to which it is removed or transferred under section 1407(j) has made a liability determination requiring further proceedings as to damages, the district court shall remand the action to the State court from which it had been removed for the determination of damages, unless the court finds that, for the convenience of parties and witnesses and in the interest of justice, the action should be retained for the determination of damages.

“(3) Any remand under paragraph (2) shall not be effective until 60 days after the district court has issued an order determining liability and has certified its intention to remand the removed action for the determination of damages. An appeal with respect to the liability determination of the district court may be taken during that 60-day period to the court of appeals with appellate jurisdiction over the district court. In the event a party files such an appeal, the remand shall not be effective until the appeal has been finally disposed of. Once the remand has become effective, the liability determination shall not be subject to further review by appeal or otherwise.

“(4) Any decision under this subsection concerning remand for the determination of damages shall not be reviewable by appeal or otherwise.

“(5) An action removed under this subsection shall be deemed to be an action under section 1369 and an action in which jurisdiction is based on section 1369 of this title for purposes of this section and sections 1407, 1697, and 1785 of this title.

“(6) Nothing in this subsection shall restrict the authority of the district court to transfer or dismiss an action on the ground of inconvenient forum.”.

(e) SERVICE OF PROCESS.—

(1) OTHER THAN SUBPOENAS.—(A) Chapter 113 of title 28, United States Code, is amended by adding at the end the following new section:

**“§ 1697. Service in multiparty, multiforum actions**

“When the jurisdiction of the district court is based in whole or in part upon section 1369 of this title, process, other than subpoenas, may be served at any place within the United States, or anywhere outside the United States if otherwise permitted by law.”.

(B) The table of sections at the beginning of chapter 113 of title 28, United States Code, is amended by adding at the end the following new item:

“1697. Service in multiparty, multiforum actions.”.

(2) SERVICE OF SUBPOENAS.—(A) Chapter 117 of title 28, United States Code, is amended by adding at the end the following new section:

**“§ 1785. Subpoenas in multiparty, multiforum actions**

“When the jurisdiction of the district court is based in whole or in part upon section 1369 of this title, a subpoena for attendance at a hearing or trial may, if authorized by the court upon motion for good cause shown, and upon such terms and conditions as the court may impose, be served at any place within the United States, or anywhere outside the United States if otherwise permitted by law.”.

(B) The table of sections at the beginning of chapter 117 of title 28, United States Code, is amended by adding at the end the following new item:

“1785. Subpoenas in multiparty, multiforum actions.”.

**SEC. 4. EFFECTIVE DATE.**

(a) SECTION 2.—The amendments made by section 2 shall apply to any civil action

pending on or brought on or after the date of the enactment of this Act.

(b) SECTION 3.—The amendments made by section 3 shall apply to a civil action if the accident giving rise to the cause of action occurred on or after the 90th day after the date of the enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Michigan (Mr. CONYERS) each will control 20 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

As the author of H.R. 860, I am grateful for the opportunity to consider it on the floor today. The bill before us has had a long legislative life, having been considered in one form or another since the 101st Congress in 1991.

This legislation addresses two important issues in the world of complex multidistrict litigation. Section 2 of the bill would reverse the effects of the 1998 Supreme Court decision in the so-called *Lexecon* case. It would simply amend the multidistrict litigation statute by explicitly allowing a transferee court to retain jurisdiction over referred cases for trial for the purpose of determining liability and punitive damages or refer them to other districts as it sees fit. In fact, section 2 only codifies what had constituted ongoing judicial practice for nearly 30 years prior to the *Lexecon* decision.

Section 3 addresses a particular species of complex litigation, so-called disaster cases, such as those involving airline accidents. The language set forth in my bill is a revised version of a concept which, beginning in the 101st Congress, has been supported by the Department of Justice, the Administrative Office of the U.S. Courts, two previous Democratic Congresses, and one previous Republican Congress.

Section 3 will help reduce litigation costs as well as the likelihood of forum shopping in single-accident mass tort cases. All plaintiffs in these cases would ordinarily be situated identically, making the case for consolidation of their actions especially compelling. These types of disasters, with their hundreds or thousands of plaintiffs and numerous defendants, have the potential to impair the orderly administration of justice in Federal courts for an extended period of time.

This committee and the full House unanimously passed the precursor to H.R. 860 last term. During eleventh hour negotiations with the other body, I offered to make three changes in an effort to generate greater support for the bill. As a show of good faith, I have incorporated those changes into the bill we are considering today. They consist of the following:

First, a plaintiff must allege at least \$150,000 in damages, up from \$75,000, to file in U.S. district court.

Second, an exception to the minimum diversity rule is created. A U.S. district court may not hear a case in

which a substantial majority of plaintiffs and the primary defendants are citizens of the same State and in which the claims asserted are governed primarily by the laws of that same State. In other words, only State courts may hear such cases.

Third, the choice-of-law section is stricken. Upon further reflection, I believe it confers too much discretionary authority on a Federal judge to select the relevant law that will apply in a given case.

In sum, this legislation speaks to process, fairness, and judicial efficiency. It will not interfere with jury verdicts or compensation rates for litigators. I therefore urge my colleagues to join me in a bipartisan effort to support the Multidistrict, Multiparty, Multiforum Trial Jurisdiction Act of 2001.

Mr. Speaker, I reserve the balance of my time.

Mr. CONYERS. Mr. Speaker, I yield myself such time as I may consume.

I rise in support of the bill. I am willing to support the bill as described by the gentleman from Wisconsin with the understanding that section 3 pertaining to disaster litigation would expand Federal court jurisdiction in a very narrowly defined category of cases in order to improve the manageability of complex litigation.

My support of the bill does not in any way serve as a precedent for support of broader expansion of diversity jurisdiction that can be found in the class action reform bill which I do not support.

Section 3 of the bill expands Federal court jurisdiction for single accidents involving at least 25 people having damages in excess of \$150,000 per claim and establishes new Federal procedures in these narrowly defined cases for selection of venue, service of process and issuance of subpoenas. I agree and thank the gentleman from Wisconsin for making the kinds of concessions that have made this measure more palatable.

As introduced in the Congress, this bill includes an additional safeguard to the limited expansion of Federal court jurisdiction. A United States District Court may not hear any case in which a “substantial majority” of plaintiffs and the primary defendants are all citizens of the same State and in which the claims asserted are governed primarily by the laws of that same State, another provision that the gentleman from Wisconsin provided us that we agreed to.

□ 1115

It is my understanding that under the bill, mass tort injuries that involve the same injury over and over again like asbestos cases, breast implant cases, would be excluded, and that the type of cases that would be included would be plane, train, bus, boat accidents, environmental spills, many of which may already be brought in Federal court.

So while I have traditionally opposed having Federal courts decide State tort

issues and disfavor the expansion of the jurisdiction of the already overloaded district courts, I will support the bill because unlike the class-action bill, it only expands Federal court jurisdiction in a much narrower class of actions, with the objective of judicial expedience.

Mr. Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from North Carolina (Mr. COBLE).

Mr. COBLE. Mr. Speaker, I thank the gentleman for yielding me this time. The distinguished gentleman from Wisconsin (Mr. SENSENBRENNER) and the distinguished gentleman from Michigan (Mr. CONYERS) have very adequately explained this bill, Mr. Speaker, so I will be brief.

I have endorsed this bill during the preceding two Congresses, and I welcome the opportunity to voice my support for it today. I will not repeat what has already been said about it; but I would note, Mr. Speaker, that the gentleman from Wisconsin (Mr. SENSENBRENNER), the chairman of the committee, did add three additional features to this year's version in an effort to compromise, and I think this good-faith gesture ought to be acknowledged.

I urge my colleagues to support H.R. 860. It will help the multidistrict litigation panel discharge its responsibilities and will ultimately streamline the adjudication of complex multidistrict cases in a manner that is fair to all litigants.

Mr. CONYERS. Mr. Speaker, I am pleased to yield 3 minutes to the gentleman from California (Mr. BERMAN), our ranking member on the Subcommittee on Courts and Intellectual Property.

Mr. BERMAN. Mr. Speaker, one does not have to be an intellectual to be on that subcommittee.

Mr. Speaker, I rise in support of House passage of H.R. 860, the Multidistrict, Multiparty, Multiplatform Trial Jurisdiction Act of 2001.

Mr. Speaker, H.R. 860 is a narrow bill designed to improve judicial efficiency. Last Congress, the House passed a virtually identical bill, H.R. 2112, by voice vote under suspension. In three previous Congresses, the House-passed bills were comprised of section 3 of H.R. 860. The bill has two operative sections.

Section 2 overturns the U.S. Supreme Court decision in 1998, *Lexecon v. Milberg, Weiss*. Section 2 will improve judicial efficiency by allowing a transferee court to retain a case for purposes of deciding liability and punitive damages as well as for hearing pretrial motions. Through language I worked out with the chairman of the committee during committee consideration of a nearly identical bill last Congress, H.R. 860 creates a presumption that cases will be sent back to transferee courts for the purposes of determining compensatory damages.

Section 3 of this bill gives the Federal courts minimal diversity jurisdiction to hear cases arising out of single accidents involving death or injury to at least 25 persons where damages of \$150,000 or more are claimed by each of those persons. Section 3 applies in very narrow, strictly circumscribed circumstances. As such, it is not a significant increase of Federal court jurisdiction, and it is justified by the judicial efficiencies it will occasion.

My colleagues should not confuse section 3 with the proposed class-action legislation which would cause a much greater and, to my way of thinking, more troubling increase in Federal court jurisdiction; nor should my colleagues see this bill as establishing a precedent in support of class-action legislation. Quite to the contrary, support for this bill is in no way an exception of support for class-action legislation.

With this understanding about the narrow reach of H.R. 860, I encourage my colleagues to vote in support of it.

Mr. CONYERS. Mr. Speaker, I yield 3 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, I appreciate the chairman and the ranking member.

I am certainly pleased that we have legislation on the floor that hopefully creates an opportunity to open the doors of the courthouse to plaintiffs and litigants in a manner that is expansive. There are a few parts of the legislation I would like to comment on and I think merit attention.

One provision of the bill allows a transferee court in multidistrict litigation to retain jurisdiction over all of the consolidated cases with the presumption that compensatory damages will be remanded to the transfer court. It also expands Federal court jurisdiction by requiring only minimal diversity as opposed to complete diversity for mass torts arising from a single incident. Lastly, the bill establishes new Federal procedures in these narrowly defined cases for the selection of venue, service of process, and issuance of subpoenas.

I am concerned, however, that this bill was marked up by the full committee only 2 days after it was introduced and received no consideration at the subcommittee level. I am aware, however, that this bill has traveled through many Congresses.

Currently, this bill could impact plaintiffs who file suit in a State court, because H.R. 860 could allow for that case to be involuntarily sent to a Federal court that may be hundreds of miles from his or her home. In this case, there is no reason to force a plaintiff into Federal court where the defendant resides or has a place of business in a State where the applicable law is the State law.

I am supportive, however, of the bill's expansion of jurisdiction over

civil actions arising out of a single accident that resulted in death or injury of 25 or more persons, if the damages exceed \$150,000 per claim and minimal diversity exists. While the bill contains a number of details, I am reassured that this bill would not apply to mass tort injuries that involve the same injury over and over again, such as asbestos or breast implants. This issue has been of real concern to me, having worked on these issues over the last couple of Congresses.

In this sense, H.R. 860 is a sharp distinction from the Interstate Class Action Jurisdiction Act of 1999. Unlike H.R. 860, the class-action bills require only minimal diversity for all civil actions brought as class actions in Federal court, regardless of the individual amounts in controversy, the number of separate incidents or injuries that may give rise to a class action or the state-based nature of the claim. Rather than providing a reasonable, limited modification to diversity jurisdiction, the class action bill, which I strongly oppose, represents a radical rewrite of the class-action rules and would ban most forms of State class actions. Not the bill today.

Mr. Speaker, in closing, let me say I know that this legislation is not a radical rewrite of existing law. It is my sincere hope that H.R. 860 will permit a genuine commitment to provide meaningful access to the courts as all Americans should have. Access to our courts and justice is simply the right thing to happen for everyone in America.

Mr. Speaker, I rise today in support of H.R. 860, the "Multidistrict, Multiparty, Multiforum Jurisdiction Act of 1999." I supported the legislation in a Judiciary Committee markup last week, with a few observations.

Clearly, consideration of H.R. 860 comes at a time where court dockets continue to rise yet pay salaries for federal judges appear inadequate to deal with the important questions that confront Americans. H.R. 860 is intended to improve the ability of federal courts to handle complex multidistrict litigation arising from a common set of facts. Last Congress the House passed a virtually identical bill, H.R. 2112, by voice vote under suspension of the rules; however, it stalled in the Senate.

There are a few parts of the legislation which merit attention. One provision of the bill allows a transferee court in multidistrict litigation to retain jurisdiction over all of the consolidated cases which the presumption that compensatory damages will be remanded to the transferor court. It also expands federal court jurisdiction by requiring only minimal diversity (as opposed to complete diversity) for mass torts arising from a single incident. Lastly, the bill establishes new federal procedures in these narrowly defined cases for the selection of venue, service of process and issuance of subpoenas.

I am concerned, however, that this bill was marked up by the full Committee only two days after it was introduced and received no consideration at the subcommittee level. Currently this bill could impact plaintiffs who file suit in a state court, because HR 860 could allow for that case to be involuntarily to a Federal court that may be hundreds of miles from

his home. In this case, there is no reason to force a plaintiff into Federal court where the defendant resides or has a place of business in the state and where the applicable law is the state law.

I am supportive however, of the bills expansion of jurisdiction over civil actions arising out of a single accident that result in the death or injury of 25 or more persons, if the damages exceed \$150,000 per claim and minimal diversity exists. While the bill contains a number of details, I am reassured that this bill would not apply to mass tort injuries that involve the same injury over and over again, such as, asbestos or breast implants. This issue has been of real concern to me.

In this sense, H.R. 860 is a sharp distinction from the "Interstate Class Action Jurisdiction Act of 1999." Unlike H.R. 860, the class action bill requires only minimal diversity for all civil actions brought as class actions in federal court, regardless of the individual amounts in controversy, the number of separate incidents or injuries that may give rise to a class action, or the state-based nature of the claim. Rather than providing a reasonable, limited modification to diversity jurisdiction, the class bill—which I strongly oppose—represents a radical rewrite of the class action rules and would ban most forms of state class actions. Such a bill is not before us today.

Mr. Speaker, I know that this legislation is not a radical rewrite of existing law. It is my sincere hope that H.R. 860 will permit a genuine commitment to providing meaningful access to our courts. Access to our courts is simply essential for every American.

Mr. CONYERS. Mr. Speaker, I am pleased to yield the remaining time to the gentleman from North Carolina (Mr. WATT).

Mr. WATT of North Carolina. Mr. Speaker, certainly I will not consume the remaining time that we have on this side, but I appreciate the opportunity to speak and I appreciate the gentleman yielding time to me.

I was one of several people in the committee who actually voted against reporting this bill favorably to the floor; and while I am not personally planning to ask for a vote on the floor if somebody else does not ask for it, if a vote is requested, I intend to vote against the bill again.

I think what has been said up to this point is correct. This bill is better in a number of respects than it was when it was originally introduced, and I want to applaud the chairman of the full committee and others who have worked to improve the bill.

I do believe, however, that the bill continues to have one blind spot in it, and the blind spot could have been addressed if the bill had received subcommittee attention or more thorough attention in the full committee; and I am hopeful that this blind spot will be addressed if this bill moves forward in the process, because I think it is a serious blind spot.

The blind spot really approaches this issue from a different end of the spectrum than the bill itself does, because the bill really talks about kind of a majority rule in big cases where the majority of the plaintiffs in a case can really control where the case is tried.

The problem with that is that cases by their very nature are individual cases, and so this bill leaves us with this kind of situation: we have an individual plaintiff who has been injured by a defendant who has a residence in the State in which the accident occurred. There is no diversity of jurisdiction between that plaintiff and that defendant. Yet, if it were a big accident and there were 25 people injured in the accident, they can take that case and it becomes a Federal issue under this bill, whereas if it were a small case, it would continue to be the case of the individual plaintiff and the plaintiff would have the right to litigate that case either in his own State court or in the jurisdiction that the plaintiff chooses to litigate the case in.

Now, for urban communities, this may not have significant implications, but there are some States in which the closest Federal district court is hundreds of miles away. While this bill does a good job of taking into account the convenience of the court and the expediency of cases on a gross basis, our courts were not made for the gross basis; our courts were made for individual litigants and for the convenience of individual litigants. In this rare circumstance where we have one plaintiff who is part of a bigger group, a defendant, who is resident in the same State as that one defendant, that plaintiff ought to be able to litigate that case in his home community, even though everybody else is moving to a Federal court, because the underlying proposition of our courts is that the courts are for the convenience of litigants, not for the convenience of judges or even for judicial efficiency. When judicial efficiency comes into conflict with the interests of an individual plaintiff or the individual parties in a case, the rights of the individual parties in that case should prevail.

So this is a small thing; it is not a Federal issue. This bill is better than it started off with. I am not at odds with anybody on this.

□ 1130

But I am hopeful that the people in control of this bill, between now and the time that it passes into law, can figure out a way, and it would be simple to do, I think, by changing one or two words in this bill, figure out a way to allow an individual plaintiff in the situation that I have described to continue to be able to litigate his case in the State courts in the community in which they live, and not have to travel miles away and become part of a big class action lawsuit that the plaintiff may not want to be associated with in the first place.

So I am hopeful that the spirit in which I am offering this, and I am not trying to be adverse to anybody, will be heard, and that somebody will try to correct this blind spot in the bill before this bill becomes law.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I disagree with the arguments made by my friend, the gentleman from North Carolina (Mr. WATT), because I think that the purpose of this bill is to make the process of adjudicating a common disaster lawsuit, such as one arising from a plane crash or a train wreck, more convenient to all of the litigants concerned.

That provides for the consolidation of these cases in a manner that has been described for determining liability and punitive damages, but not for determining compensatory damages. So overall, it makes the system fairer for all litigants, although it might make the system a bit inconvenient to some litigants. So I think we have a balancing effect here.

I am just concerned over a common disaster case bringing about a huge plethora of lawsuits that would be filed in courts all over the country. Given where the plaintiffs would live who were injured or killed in the plane crash, or where the airline was located, where the crash occurred, or the manufacturer of the plane and its component parts were situated, we could have lawsuits on the same disaster going on in every court.

Sooner or later there would be appeals which would be expensive, that would have to be consolidated so there would be a single law that would be applicable to everybody.

We can short-circuit that problem by the type of consolidation that is being proposed in this bill. The administrative office of the U.S. courts and the multidistrict litigation panel of the judicial conference of the United States have supported this bill. They do not like to see an expansion of Federal jurisdiction, but they see this as necessary for the streamlining of the adjudication of these claims.

Someone said, "Justice delayed is justice denied." Whenever we have a complex case like this, there are delays that are in and of the nature of the litigation. But I believe that this will speed up the final resolution in bringing to closure any litigation that may arise as a result of one of these disasters. I would hope that the bill would be passed for that reason.

Mr. Speaker, I include for the RECORD two letters related to this matter.

The letters referred to are as follows:

JUDICIAL CONFERENCE OF  
THE UNITED STATES,  
Washington, DC, March 13, 2001.

Hon. F. JAMES SENSENBRENNER, Jr.,  
Chairman, Committee on the Judiciary, House  
of Representatives, Rayburn House Office  
Building, Washington, DC.

DEAR MR. CHAIRMAN: On behalf of the Judicial Conference of the United States, I write to express the support of the federal judiciary for H.R. 860, the "Multidistrict, Multiparty, Multiforum Trial Jurisdiction Act of 2001." This bill was reported favorably on March 8, 2001, by the Committee you chair. H.R. 860 will facilitate the resolution of claims by citizens and improve the administration of justice.

Section 2 of the bill amends 28 U.S.C. § 1407, the multidistrict litigation statute, to allow a judge with a transferred case to retain it for trial or to transfer it to another district. Presently, section 1407(a) authorizes the Judicial Panel on Multidistrict Litigation to transfer civil actions pending in multiple federal judicial districts with common questions of fact "to any district for coordinated or consolidated pretrial proceedings." It also requires the Judicial Panel to remand any such action to the district court in which the action was filed at or before the conclusion of such pretrial proceedings, unless the action is terminated before then in the transferee court.

Although the federal courts had for nearly 30 years followed the practice of allowing a transferee court to invoke the venue transfer provision (28 U.S.C. § 1404(a)) and transfer the case to itself for trial purposes, the Supreme Court in *Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998), held that statutory authority did not exist for a district judge conducting pretrial proceedings to transfer a case to itself for trial. The Court noted that the proper venue for resolving the desirability of such self-transfer authority is "the floor of Congress."

A proposal to amend section 1407 in response to the *Lexecon* decision was approved by the Judicial Conference at its September 1998 session and is supported by the Judicial Panel on Multidistrict Litigation. As experience has shown, there is wisdom in permitting the judge who is familiar with the facts and parties and pretrial proceedings of a transferred case to retain the case for trial. Also, as with most federal civil actions, multidistrict litigation cases are typically resolved through settlement. Allowing the transferee judge to set a firm trial date promotes the resolution of these cases.

Section 3 of H.R. 860 adds a new section 1369 to title 28, United States Code, entitled "multiparty, multiforum jurisdiction." It essentially provides that the United States district courts shall have jurisdiction over any civil action that arises from a single accident or event in which at least 25 persons have died or been injured at a particular location, where any such injuries result in alleged damages exceeding \$150,000 by each plaintiff and which involves minimal diversity between adverse parties. The legislation also requires that one defendant must reside in a state that is different from the location of the accident or the residence of any other defendant or that substantial parts of the event took place in different states. The transferee court would be authorized to determine issues of liability and punitive damages and would remand cases to the transferor court for determinations of compensatory damages, unless the court finds, for the convenience of parties and witnesses and in the interest of justice, that the action should be retained for the determination of damages. The district court, however, must abstain from hearing an action under the bill if a substantial majority of all plaintiffs are citizens of a single state of which the primary defendants are also citizens and the claims asserted will be governed primarily by the laws of that state.

Upon consideration of related proposals during the 100th Congress, the Judicial Conference in March 1988 approved in principle the creation of federal jurisdiction that would rely on minimal diversity to consolidate multiple litigation in state and federal courts of cases involving personal injury or property damage and arising out of a single event. The Conference endorsed the idea of redirecting diversity jurisdiction to serve a purpose that state courts are not able to serve, namely to facilitate the consolidation of scattered actions arising out of the same

accident or event and thereby "to promote more expeditious and economical disposition of such litigation."

Today, the Judicial Panel on Multidistrict Litigation can transfer to one judge for pretrial proceedings those cases involving common questions of fact that are pending in federal courts throughout the country. 28 U.S.C. § 1407. Section 3 of H.R. 860 would expand federal jurisdiction by allowing state cases arising from a single event (such as a plane crash or hotel fire) to be brought into such process as a result of filing, removal, or intervention. Section 3 of the bill would avoid multiple trials on common issues, minimize litigation costs, and ensure that litigants are treated consistently and fairly. Thus, this legislation will promote the resolution of litigants' claims in these unique and related cases.

Thank you for taking prompt action on this important and necessary legislation. If you or your staff have any questions, please contact Mike Blommer, Assistant Director, Office of Legislative Affairs (202-502-1700).

Sincerely,

LEONIDAS RALPH MECHAM,  
Secretary.

JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION,  
March 13, 2001.

Hon. F. JAMES SENSENBRENNER, Jr.,  
Chairman, Committee on the Judiciary, House  
of Representatives, Rayburn House Office  
Building, Washington, DC.

DEAR MR. CHAIRMAN: On behalf of the Judicial Panel on Multidistrict Litigation, I am writing to urge support of H.R. 860, the Multidistrict, Multiparty, Multiforum Trial Jurisdiction Act of 2001. As you know, my predecessor as Chairman of the Panel, Judge John F. Nangle, testified in favor of the previous version of this legislation on June 16, 1999, before the Subcommittee on Courts and Intellectual Property.

Section 2 of this legislation, to restore the options available to the litigants and the federal judiciary prior to the 1998 Supreme Court *Lexecon* decision, passed unanimously word-for-word in both the House of Representatives and the Senate in the last Congress. The previous version of Section 3 of the legislation, aimed at streamlining adjudication of single accident litigation, has passed the House of Representatives in bipartisan fashion on four prior occasions—twice when the Democrats were in the majority in the 101st and 102nd Congresses, and twice when the Republicans were in the majority in the 105th and 106th Congresses.

Surely the time has come to enact this clearly beneficial legislation for the reasons stated in Judge Nangle's testimony. Your continued leadership in this area is highly valued and appreciated.

Sincerely,

WM. TERRELL HODGES,  
Chairman.

Mr. SENSENBRENNER. Mr. Speaker, I reserve the balance of my time.

Mr. CONYERS. Mr. Speaker, I yield the balance of my time to the gentleman from California (Mr. BERMAN).

Mr. SENSENBRENNER. Mr. Speaker, I yield the gentleman from California 1 minute.

The SPEAKER pro tempore (Mr. SHIMKUS). The gentleman from California (Mr. BERMAN) is recognized for 6 minutes.

Mr. BERMAN. Mr. Speaker, I thank the ranking member and the gentleman from Wisconsin for their generous yielding of time to me.

Mr. Speaker, I just want to make a few comments in response to the gentleman from North Carolina, because he makes legitimate and accurate points about this legislation. But in response, I would make a few points.

Mr. Speaker, concerning H.R. 860, the circumstances which this bill applies to are so narrow and unique, and because so many civil actions which arise out of a single action are already subject to Federal jurisdiction, there really are in a practical sense very few plaintiffs who will find themselves in a Federal court who would not have already been there.

But even if they do, this bill has protection, because the bill preserves the ability of the transferee court, the Federal court to which this multi-party litigation has been assigned, it preserves the ability of that court to transfer back or dismiss an action on the ground of an inconvenient forum.

So that plaintiff has the ability to make his case that even though it is a result of that single accident, even though I am alleging \$150,000, in my particular situation, notwithstanding the efficiencies that would justify a single trial, for purposes of liability and other issues, we should go back to the State court.

The gentleman from North Carolina says, but he has to get to that court in order to make that request. That is true.

Mr. WATT of North Carolina. Mr. Speaker, will the gentleman yield?

Mr. BERMAN. I yield to the gentleman from North Carolina.

Mr. WATT of North Carolina. Mr. Speaker, I appreciate the gentleman yielding. I appreciate him taking seriously the comments that I am making.

I would just point out to him two things. Yes, this bill will make the system more efficient, but from 22 years of the practice of law, I will tell the gentleman that every single case is a unique case for the parties in that case.

So when we say that this applies only to a small number of cases, the gentleman is absolutely right. I do not argue that. But for that individual plaintiff who is coming into court, we ought to make the courts as conveniently available to that one individual as we can.

The gentleman says that this person can show up in the Federal court, make a motion to move it back, but here he is sitting there with 16 other plaintiffs who say, Please do not move this case. All I am saying is, that person ought to be allowed to go and litigate their case in a forum that is convenient to them, not have their case and the placement of it decided on the basis of some majority rule theory.

I understand efficiency of the court. I understand why the Judicial Conference would favor this. But in the interest of individual plaintiffs, I think it is important to have another exception in this bill, and it would be used so infrequently that it would not be an imposition. It could be done very easily in the context of this bill.

Mr. BERMAN. Reclaiming my time, Mr. Speaker, this is not just about efficiency. This is also about convenience of the parties.

We had a horrible accident recently with a private plane taking the Oklahoma State basketball team. That may not be applicable, because this requires 25 people. But think of a similar situation where a huge number of those passengers are from one State. The defendant is from some other State.

This allows the multi-party committee, the panel that decides these multi-district multi-party cases where they should be tried, to consider the convenience of the plaintiffs in this kind of a case, not simply the question of efficiency. So there are some real positive benefits from this legislation, as well.

Moreover, on the issue of damages, which can be particularly a matter to be determined by local communities and peers in the community where that plaintiff resides, this creates the presumption that that issue, the compensatory damages issue, will go back, in the case of the hypothetical that you cited, to the State court for determination.

Yes, the bill will cause some plaintiffs to find themselves in Federal court, while without the bill those plaintiffs would have been able to remain in State courts. I think there are several policy considerations. I have mentioned them. As the chairman said earlier, we have to draw a balance. Having the very complicated and complex issue of liability tried in one place makes sense.

As we balance these things, Mr. Speaker, I come down on the side of having the complicated, expensive, and controversial issue litigated in one court.

And I might just add in the remaining seconds I have that from what I understand from plaintiff's attorneys involved in these accident cases and other cases like this that this bill addresses, that the problem is, sometimes that guy who wants to file in the State court, the lawyer who wants to file in the State court because it is an in-State defendant, he really wants to be the free rider in this. He wants the whole thing tried and all the discovery, all that done by others. Then, after that issue is settled, he will come in with a State action, not having put up his share of the costs and his efforts, and cash in. I am told that is one aspect of why some plaintiff's lawyers, no one in this room, I am sure, would actually prefer to file in the State court.

Mr. CONYERS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House sus-

pend the rules and pass the bill, H.R. 860, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

# INTELLECTUAL PROPERTY AND HIGH TECHNOLOGY TECHNICAL AMENDMENTS ACT OF 2001

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 320) to make technical corrections in patent, copyright, and trademark laws, as amended.

The Clerk read as follows:

S. 320

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

## SECTION 1. SHORT TITLE.

*This Act may be cited as the "Intellectual Property and High Technology Technical Amendments Act of 2001".*

## SEC. 2. OFFICERS AND EMPLOYEES.

(a) RENAMING OF OFFICERS.—(1)(A) Except as provided in subparagraph (B), title 35, United States Code, other than section 210(d), is amended—

(i) by striking "Director" each place it appears and inserting "Commissioner"; and

(ii) by striking "Director's" each place it appears and inserting "Commissioner's".

(B) Section 3(b)(5) of title 35, United States Code, is amended by striking "Director" the first place it appears and inserting "Commissioner".

(C) Section 3(a) of title 35, United States Code, is amended in the subsection heading, by striking "DIRECTOR" and inserting "COMMISSIONER".

(D) Section 3(b)(1) of title 35, United States Code, is amended in the paragraph heading, by striking "DIRECTOR" and inserting "COMMISSIONER".

(2) The Act of July 5, 1946 (commonly referred to as the "Trademark Act of 1946"; 15 U.S.C. 1051 et seq.) is amended by striking "Director" each place it appears and inserting "Commissioner".

(3)(A) Title 35, United States Code, other than subsection (f) of section 3, is amended by striking "Commissioner for Patents" each place it appears and inserting "Assistant Commissioner for Patents".

(B) Title 35, United States Code, other than subsection (f) of section 3, is amended by striking "Commissioner for Trademarks" each place it appears and inserting "Assistant Commissioner for Trademarks".

(C) Section 3(b)(2) of title 35, United States Code, is amended—

(i) in the paragraph heading, by striking "COMMISSIONERS" and inserting "ASSISTANT COMMISSIONERS";

(ii) in subparagraph (A), in the last sentence—

(I) by striking "a Commissioner" and inserting "an Assistant Commissioner"; and

(II) by striking "the Commissioner" and inserting "the Assistant Commissioner";

(iii) in subparagraph (B)—

(I) by striking "Commissioners" each place it appears and inserting "Assistant Commissioners";

(II) by striking "Commissioners" each place it appears and inserting "Assistant Commissioners"; and

(iv) in subparagraph (C), by striking "Commissioners" and inserting "Assistant Commissioners".

(D) Section 3(f) of title 35, United States Code, is amended in subparagraphs (A) and (B) of paragraph (2)—

(i) by striking "the Commissioner" each place it appears and inserting "the Assistant Commissioner"; and

(ii) by striking "a Commissioner" each place it appears and inserting "an Assistant Commissioner".

(E) Section 13 of title 35, United States Code, is amended—

(i) by striking "Commissioner of" each place it appears and inserting "Assistant Commissioner for"; and

(ii) by striking "Commissioners" and inserting "Assistant Commissioners".

(F) Chapter 17 of title 35, United States Code, is amended by striking "Commissioner of Patents" each place it appears and inserting "Assistant Commissioner for Patents".

(G) Section 297 of title 35, United States Code, is amended by striking "Commissioner of Patents" each place it appears and inserting "Commissioner".

(4) Section 5314 of title 5, United States Code, is amended by striking

"Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office."

and inserting

"Under Secretary of Commerce for Intellectual Property and Commissioner of the United States Patent and Trademark Office."

(5) Section 5315 of title 5, United States Code, is amended by striking

"Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office."

and inserting

"Deputy Under Secretary of Commerce for Intellectual Property and Deputy Commissioner of the United States Patent and Trademark Office."

(6)(A) Sections 303 and 304 of title 35, United States Code, are each amended in the section headings by striking "Director" and inserting "Commissioner".

(B) The items relating to sections 303 and 304 in the table of sections for chapter 30 of title 35, United States Code, are each amended by striking "Director" and inserting "Commissioner".

(7)(A) Sections 312 and 313 of title 35, United States Code, are each amended in the section headings by striking "Director" and inserting "Commissioner".

(B) The items relating to sections 312 and 313 in the table of sections for chapter 31 of title 35, United States Code, are each amended by striking "Director" and inserting "Commissioner".

(8) Section 17(b) of the Trademark Act of 1946 (15 U.S.C. 1067) is amended by striking "Commissioner for Patents, the Commissioner for Trademarks" and inserting "Assistant Commissioner for Patents, the Assistant Commissioner for Trademarks".

## (b) ADDITIONAL CLERICAL AMENDMENTS.—

(1) The following provisions of law are amended by striking "Director" each place it appears and inserting "Commissioner".

(A) Section 9(p)(1)(B) of the Small Business Act (15 U.S.C. 638(p)(1)(B)).

(B) Section 19 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831r).

(C) Section 182(b)(2)(A) of the Trade Act of 1974 (19 U.S.C. 2242(b)(2)(A)).

(D) Section 302(b)(2)(D) of the Trade Act of 1974 (19 U.S.C. 2412(b)(2)(D)).

(E) Section 702(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 372(d)).

(F) Section 1295(a)(4)(B) of title 28, United States Code.

(G) Section 1744 of title 28, United States Code.

(H) Section 151 of the Atomic Energy Act of 1954 (42 U.S.C. 2181).

(I) Section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182).